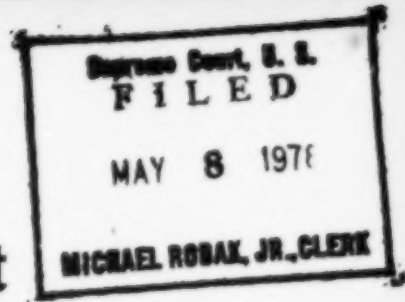


77-1601

**Supreme Court
of the
United States**



CAMILLE MILLER PERRY
and
EUGENIA SUMMERLIN,
Petitioners

vs

IRENE WILSON, CECILA BUCHANAN
and
JOSEPHINE MATTOX,
Respondents

vs

C. L. HIGGISON,
Respondent

ATTORNEY FOR PETITIONERS
Randall M. Clark
P.O. Box 384
Brunswick, Georgia 31520
912-264-6661

PETITION FOR CERTIORARI

This case is reported in Perry vs. Higginson, 144 Ga. Appls, 58.

Jurisdiction is invoked under the certiorari jurisdiction of this court to review rulings of state courts involving constitutional law issues.

The Georgia Court of Appeals ruled on November 7, 1977, and denied rehearing on November 18, 1977. The Georgia Supreme Court was petitioned for certiorari which it denied and denied reconsideration on February 8, 1978.

This court has jurisdiction pursuant to 28 U.S.C. 1257 (3).

The question presented for review is:

1. Does the following charge violate the principles announced by this court in Trimble vs. Gordon 52L Ed 2d 31.

"Furthermore, an illegitimate child cannot inherit from his grandparents, his uncles and aunts, his nephews and nieces, his cousins or any legitimate children of his mother. Under the rules of inheritance of Georgia the illegitimate child can only inherit from his mother and other illegitimate children of his mother. On the other hand, quite a few people can inherit from the illegitimate child.

Such words as child, children, and issue, used in the rules of inheritance in the State of Georgia, are deemed to mean legitimate children only." T295.

The constitutional provision violated is the decision in Trimble vs. Gordon 52L Ed 2d 31. The Georgia Law involved is the Official Code of Georgia, 1933, Section 113-904.

"Bastards have no inheritable blood, except that given to them by express law. They may inherit from their mother, and from each other, children of the same mother, in the same manner as if legitimate. Legitimate and illegitimate children of the same mother shall inherit alike the estate of the mother. If a bastard dies leaving no issue or widow, his mother, brothers, and sisters shall inherit his estate equally. In distributions under this law the children of a deceased bastard shall represent the deceased parent."

This case was for distribution of an estate and to determine the identity of the heirs-at-law of one Fleeta Morrison, a black woman who lived on St. Simons Island, Georgia and who died in 1957.

Counsel for claimants objected to the charge as follows: (T298) "Your honor, at this time, I object to any discrimination. I object to the court's instructions making a discrimination to the legitimacy or illegitimacy of a child. We object on the basis of it being unconstitutional to the state, and unconstitutional as it is applied here."

The court responded by saying "Is that all?" (T298) The issue was raised in the motion for a new trial. The issue of the constitutionality of the charge was presented to the Georgia Court of Appeals which ruled that a constitutional law issue was not properly raised. The issue was presented to the Georgia Supreme Court by petition for certiorari which was denied. The writ should be granted to ensure compliance with the decision of this court in Trimble vs. Gordon 52 L Ed 2d 31.

Respectfully submitted this 5 day of May, 1978.

1st Randall M. Clark
Randall M. Clark

1706 Ellis Street
P. O. Box 384
Brunswick, Georgia 31520
912-264-6661

CERTIFICATE OF SERVICE

Service by mailing a copy to:

Attorney for C. L. Higgison
Robert Killian
P. O. Box 1795
Brunswick, Georgia 31520

Attorney for Irene Wilson,
Cecila Buchanan and Josephine Mattox
William Major
310 Fulton Federal Bldg.
Atlanta, Georgia 30303

and notifying the Georgia Court of Appeals of this petition by
mailing copies on this 5 day of May,
1978.

1st Randall M. Clark
Randall M. Clark

1706 Ellis Street
P. O. Box 384
Brunswick, Georgia 31520
912-264-6661

SMITH, Judge.

In this case involving the distribution of an estate, appellants claim the trial court erred in its charge and in overruling their motion for new trial. We affirm.

1. Appellants objected, as follows, to the charge setting out the principle of Code § 113-904: "Your honor, at this time, I object to any discrimination. I object to the court's instructions making a discrimination to the legitimacy or illegitimacy of a child. We object on the basis of it being unconstitutional to the state, and unconstitutional as it is applied here." This objection was insufficient to raise any Constitutional question as to the law charged, and the trial court's overruling of the objection was not error. Elinburg v. State, 227 Ga. 246 (179 SE2d 926) (1971).

2. Appellants filed their motion for new trial on December 19, 1975, before the court entered its judgment, on December 22, 1975. Since the motion for new trial was void, the trial court did not err in denying it. Moore v. Moore, 229 Ga. 600 (193 SE2d 608) (1972).

Judgment affirmed. Bell, C. J., and McMurray, J., concur.

Court of Appeals of the State of Georgia

ATLANTA, November 18, 1977

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

54445. Camille Perry et al. v. C. L. Higgison et al.

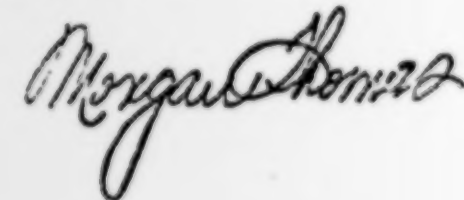
Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied.

Court of Appeals of the State of Georgia

CLERK'S OFFICE, ATLANTA, November 18, 1977

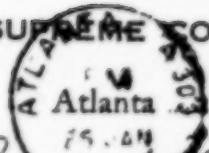
I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.



CLERK.

CLERK'S OFFICE, SUPREME COURT OF GEORGIA



Dear Sir:

Case No. 33242. *Perry et al. v. Haggison*

The Supreme Court today *denied*
the writ of certiorari in this case.

Very truly yours,

MRS. JOLINE B. WILLIAMS, Clerk

Clerk's Office, Supreme Court of Georgia

DEAR SIR:

ATLANTA *2/8/78*

The motion for a *reconsideration* ~~rehearing~~ was denied today:

Case No. *33242, Perry et al. v. Haggison et al.*

Yours very truly,

MRS. JOLINE B. WILLIAMS, C

JUN 5 1978

MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1977

—
No. 77-1601
—

CAMILLE MILLER PERRY
and
EUGENIA SUMMERLIN,
Petitioners,

v.

IRENE WILSON, CELIA BUCHANAN,
JOSEPHINE MATTOX and C. L. HIGGISON,
Respondents.

—
**RESPONSE IN OPPOSITION TO PETITION FOR
WRIT OF CERTIORARI**
—

WILLIAM H. MAJOR
Attorney for Respondent,
Celia Wilson Buchanan

Of Counsel:

HEYMAN AND SIZEMORE
300 Fulton Federal Building
Atlanta, Georgia 30303
404/521-2268

IN THE
Supreme Court of the United States
OCTOBER TERM, 1977

No. 77-1601

CAMILLE MILLER PERRY
and
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v.

IRENE WILSON, CELIA BUCHANAN,
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Respondents.

**RESPONSE IN OPPOSITION TO PETITION FOR
WRIT OF CERTIORARI**

This response is submitted by CELIA WILSON BUCHANAN, one of the Respondents, in opposition to the Petition for the Writ of Certiorari.

The Georgia Court of Appeals ruled in this case that the objection made to the charge of the court at the time of trial was insufficient to properly raise any constitutional question, holding:

“This objection was insufficient to raise any constitutional question as to the law charged, and the

trial court's overruling of the objection was not error. *Elinburg v. The State*, 227 Ga. 246 (179 S.E. 2d 926) (1971)." (Pet. for Cert. at page 4)

The Georgia test, as stated by the Supreme Court of Georgia in *Elinburg v. The State*, 277 Ga. 246 (179 S.E.2d 926) (1971), is that:

"... at least three things must be shown, (1) the statute or the particular part or parts of the statute which the party would challenge must be stated or pointed out with fair precision; (2) the provision of the Constitution, which it is claimed has been violated must be clearly designated; and (3) it must be shown wherein the statute, or some designated part of it, violates such constitutional provision."

This Court has consistently held that it is without power to decide whether constitutional rights have been violated when the federal question sought to be reviewed has not been seasonably raised in accordance with the requirements of state law. *Isidore Edelman v. People of the State of California*, 344 U.S. 357; *Hulbert v. Chicago*, 202 U.S. 275; *Mutual Life Ins. Co. v. McGrew*, 188 U.S. 291. See also Rule 23(f) of this Court.

CONCLUSION

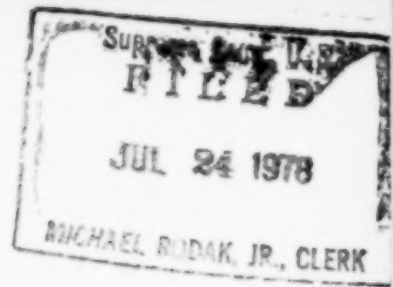
It is respectfully submitted that this applicant for certiorari raises no substantial federal question and should be denied.

WILLIAM H. MAJOR
Attorney for Respondent,
Celia Wilson Buchanan

Of Counsel:

HEYMAN AND SIZEMORE
300 Fulton Federal Building
Atlanta, Georgia 30303
404/521-2268

77-1601



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REPLY BRIEF

NO. 77 - 1601

**ATTORNEY FOR PETITIONERS
Randall M. Clark
P.O. Box 384
Brunswick, Georgia 31520
912-264-6661**

REPLY BRIEF

Pursuant to directions of the clerk of this court in his letter of June 23, 1978, petitioner files his reply brief.

The United States Supreme Court is not bound by a state court determination of waiver. *Street v New York* 394U.S. 576, 583.

This court clearly has jurisdiction to determine that waiver did not occur. *Truax v Corrigan* 257U.S. 312; *Parker v Illinois* 333U.S. 571; and *Union P.R. Co. v Public Service Co.* 248U.S. 67.

Since the attorney representing petitioners at trial objected to a discrimination based on legitimacy or illegitimacy of a child waiver did not occur.

Respectfully submitted this 21 day of July, 1978.

/s/ Randall M. Clark
Randall M. Clark

P.O. Box 384
1708 Ellis Street
Brunswick, Georgia 31520

CERTIFICATE OF SERVICE

Service by mailing three copies each to:

Attorney for C.L. Higgison
Robert Killian
Post Office Box 1795
Brunswick, Georgia 31520

Attorney for Celia Wilson Buchanan,
William Major
310 Fulton Federal Building
Atlanta, Georgia 30303

This 21 day of July, 1978.

/s/ Randall M. Clark
Randall M. Clark

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